

REMARKS

This application has been amended so as to place it in condition for allowance at the time of the next Official Action.

The present application is a reissue application. As a result, the proper form for the amendment is defined by 37 CFR 1.173, not 37 CFR 1.121.

In accordance with 37 CFR 1.173(c), the following is the status of each claim now in the application: Original patent claims 1-13 are pending; and added claims 14-30 are pending.

The present amendment is believed to be fully responsive to the Official Action of January 28, 2005. The Official Action rejects claims 3 and 5 under 35 USC §112, second paragraph as being indefinite. The Official Action identifies the language of each of claims 3 and 5 that underlies the present rejection. Accordingly, Applicant has amended each of claims 3 and 5 to eliminate the language in question.

In accordance with the requirements of 37 CFR 1.173(b) (2), the additions and deletions are all indicated with respect to the form of the claims as issued in the original patent. Deletions are identified by single brackets, and additions by underscoring.

Reconsideration and withdraw of this rejection are therefore respectfully requested.

The Official Action rejects claims 1, 2, 5, 6, 9-11, 14-16, and 21-25 under 35 USC §102(e) as being anticipated by

BERNHARDT et al. Reconsideration and withdrawal of this rejection are respectfully requested for the following reasons.

Of the rejected claims, claims 1, 14, and 16 are independent. Each of these was the subject of discussion between Applicants' counsel and the Examiner in the personal interview of May 24, 2005. As indicated by the Interview Summary associated with such meeting, it was agreed that the amendment of independent claims 1 and 16 as discussed would overcome the rejection of record. The present amendment reflects the amendment discussed during the personal interview.

Claim 16 is not an original patent claim, but rather a claim added by way of preliminary amendment in the present reissue application. Accordingly, claim 16 is presented in a form compliant with 37 CFR 1.173. Specifically, the entire text of the claim is presented as underscored, with no indication of the differences of the present form of claim 16 and the form presented with the preliminary amendment in this application.

Accordingly, Applicants include herewith an indication of differences between the current form of claim 16 and that of the original preliminary amendment, for the benefit of the Examiner.

wherein the threaded shank has a ball end for articulation in a housing of a spherical cup of the head, allowing the shank to be selectively oriented with respect to the head, and wherein the threaded shank and the means for longitudinally connecting are equipped with means for immobilizing constructed and arranged so that the shank and the ball in terms of rotation are prevented from rotating once the threaded shank has been introduced into a corresponding through-hole through the means for longitudinally connecting.

As is indicated by the above markings, Applicant has replaced "means for mobilizing" with the recitation of the threaded shank and means for longitudinally connecting being constructed and arranged so that the shank and the ball are prevented from rotating once the thread shank has been introduced into a corresponding through-hole though the means longitudinally connecting. The support for this change to claim 16 is provided by claims 1 and 2 of the original patent as issued, as indicated in connection with claim 16 as originally presented in the preliminary amendment. The support for the changes to the patent claim 1 is provided at least by original figure 10 of the patent, illustrating the centers R1 and R2.

This amendment addresses each of the claims identified in the anticipation rejection, but for claims 14, 15, 21, 22, and 25. Of these, claim 14 is independent, with the remaining claims identified above depending therefrom. Reconsideration and

withdraw of the rejection as to claim 14 and the claims depending therefrom are respectfully requested for the following reasons:

Claim 14 recites, among other features, that the ball is held in the housing by assembling the edge of the housing around the ball. The BERNHARDT et al. reference describes a system in which the ball is retained on the screw by screwing a threaded cap. This is illustrated by figures 3 and 4 of BERNHARDT et al., which show the sleeve 48 that is threaded onto the end 36 of the lower section 32 via threads 54. Doing so captures the spherical surface 26 of the upper section 22.

Applicants suggest that the arrangement of the BERNHARDT et al. device does not constitute "assembling around the ball." The edge of the sleeve 48 that captures the spherical surface 26 is not assembled around the ball. Rather, the edge in question is preexisting, and is merely dropped over the ball. Applicants suggest that this construction cannot be reasonably construed as assembling around the ball, as the outlet of the sleeve 48 is a preexisting structure.

This is even more evident in connection with rejected claim 25, which depends from claim 14. Claim 25 requires that the edge of the housing represents a crimp around the ball. The structure of the BERNHARDT et al. device appears specifically designed to avoid such crimping, by allowing for the sleeve 48 to be screwed down onto the threads 52 as the mechanism for capturing the spherical surface 26.

Accordingly, Applicants suggest that the rejection of claim 14 cannot reasonably be maintained, and the rejection of claim 25 even more clearly fails to find support in applied reference, particularly in the context of an anticipation rejection.

The Official Action rejects claims 4, 9, 18, 19, and 26-28 under 35 USC §103 as being unpatentable over BERNHARDT et al. in view of MULLANE. Reconsideration and withdraw of this rejection is respectfully requested for the following reasons.

Of the rejected claims, claims 4 and 9 depend from claim 1, and claims 18, 19, and 26-28 each depend ultimately from independent claim 16.

As discussed above, Applicant has amended each of claims 1 and 16, and the undersigned and the Examiner reached agreement as to the ability of such amendment to overcome the present rejection. As a result, the allowability of claims 1 and 16, at least as to the prior art of record, extends to the claims that depend therefrom.

Irrespective of the ability of the MULLANE reference to teach that for which it is offered, namely the use of a male shape designed to cooperate with a female shape of a tool and a narrow portion comprising a rotation stopping geometry, it nonetheless fails to overcome the shortcoming of the primary BERNHARDT et al. reference with respect to the current form of

the claims. Reconsideration and withdraw of the present obviousness rejection are therefore respectfully requested.

The Official Action rejects claim 7 under 35 USC §103(a) as unpatentable over BERNHARDT et al. in view of PETRETO et al. Claim 7 depends from claim 1, which is believed to be allowable, at least over the art of record, as discussed above. Accordingly, claim 7 should be similarly considered, at least by virtue of such dependence.

The secondary PETRETO et al. reference, irrespective of its ability to suggest the use of a shackle with a conical bearing surface to prevent relative movement, nevertheless fails to overcome the shortcomings of the primary BERNHARDT et al. reference, as discussed above. Accordingly, reconsideration and withdrawal of the obviousness rejection are respectfully requested.

The Official Action rejects claims 8 and 13 under 35 USC §103 as being unpatentable over BERNHARDT et al. in view of WAGNER. Claim 13 was also the subject of discussion during the personal interview. Claim 13 is an independent system claim corresponding to independent device claim 1, discussed above. Applicant has amended claim 13 in the same manner as discussed above in connection with claim 1. Accordingly, the arguments offered in connection with claim 1 apply equally with claim 13 as does the support for such amendment.

The secondary WAGNER reference is offered only for its asserted suggestion of the use of a shank with a transverse collar, and a tool for positioning a threaded shank in anchoring the osteosynthesis device to the bone. However, the WAGNER reference nevertheless fails to overcome the shortcomings of the primary BERNHARDT et al. reference, particularly with respect to the recited characteristics as to the ball and exterior surface of the head having respective centers of rotation separated by a distance. As such, Applicant respectfully suggests that the combination of the references fails to render obvious the present invention as recited in claim 13, particularly as now recited.

In addition to the notice described above, Applicant has modified new claim 17 from the form presented in the preliminary amendment. The modification constitutes removal of the "formed on a collar" recitation in connection with the rotation-stopping geometry. Applicants note that such change should have no effect on the allowability of claim 17, which depends from independent claim 16 in any event.

Further in addition to the amendments described above, Applicants have added new claims 29 and 30. New claim 29 finds the same support as does claim 16, discussed in the original preliminary amendment. Claim 29 is believed to be allowable for at least the reasons supporting the allowability of claim 16, as well. Claim 29, unlike claim 16, recites the features of the present invention without using means-plus-function form.

Similarly, new claim 30 is supported in the same way as claim 1 of the original patent. New claim 30 also recites features of the present invention without using the means-plus-function form. Claim 30 should also be allowable at least by virtue of the allowability of amended patent claim 1.

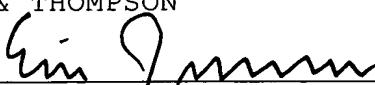
The Official Action explicitly states that claims 3, 12, 17, and 21 are allowable but for their dependence from rejected base claims. Applicants suggests that both these claims, as well as all other claims now pending in this reissue application should be in condition for immediate allowance, and an early indication of the same is respectfully requested.

If the Examiner has any questions or requires further clarification of any of the above points, the Examiner may contact the undersigned attorney so that this application may continue to be expeditiously advanced.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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